

HUMAN SERVICES BOARD

INTRODUCTION

On or about January 14, 2008, the Howard Center sent petitioner a written decision. In that decision, the Howard Center stated that they could not offer ADSS under the State System of Care Plan while petitioner is incarcerated and

receiving services from DOC. In addition, the Howard Center stated they were not sure that petitioner met the definition of a developmentally disabled individual. The Howard Center stated they would look into whether petitioner was developmentally disabled because they could provide petitioner ADSS upon his release if he met all the eligibility criteria. Petitioner was informed of his appeal rights.

On or about April 1, 2008, petitioner requested a fair hearing. The parties now agree that petitioner is a developmentally disabled individual and meets that prong of the eligibility criteria. The petitioner is not seeking services through DAIL while he remains incarcerated. The remaining question is the scope of ADSS to be provided petitioner upon his release into the community. Once petitioner is released into the community, he will remain under DOC supervision. DOC will then provide services related to community safety, and DAIL will provide services related to petitioner's disability.

Over the past few months, there has been a question where petitioner will be placed upon his release from jail. As a result, inquiries and applications for ADSS have been made to other community agencies. On or about September 2,

2008, Northwestern Counseling and Support Services found petitioner eligible for ADSS, but they did not set out the scope of services or funding.

DAIL represents that it is difficult to determine funding and scope of services until DOC finalizes their case plan release for petitioner; the DOC case plan will set parameters that will impact the delivery of developmental disability services. Petitioner represents that DOC will not finalize their plans until the developmental disability services have been defined.

DISCUSSION

The Vermont Developmental Disabilities Act provides access to community support and services to individuals who are developmentally disabled. 18 V.S.A. §§ 8721, *et seq.* Pursuant to the Act, DAIL has adopted regulations setting out eligibility criteria for services for both children and adults. 18 V.S.A. § 8726. In addition, the Act charged DAIL to develop a System of Care plan every three years. 18 V.S.A. § 8725.

The eligibility regulations are set out in Part 5 of the Regulations Implementing the Developmental Disabilities Act of 1996 (D.D. Act Regulations). The parties agree that the

petitioner is a developmentally disabled individual in need of services.

Once an individual is considered eligible, an assessment is done to determine the nature of services and amount of funding needed after subtracting what the individual and his family can pay and after subtracting supports or services from other sources. D.D. Regulation 5.06. The individual is to be notified of the assessment results and amount of funding within forty-five days of the application, although there are provisions for additional time if the agency cannot complete their determination within forty-five days. D.D. Regulation 5.07.

The presenting issues arose from a decision by the Howard Center that they could not provide services under the System of Care plan to an incarcerated individual and that they were not sure that petitioner was developmentally disabled. The Howard Center is no longer the community agency who will deliver developmental disability services to petitioner. There is no longer any disagreement that petitioner is developmentally disabled. There is no challenge to the decision that the System of Care plan does not allow services funded by the Developmental Disabilities

Act to petitioner while he is incarcerated. The presenting issues are moot. Fair Hearing No. 17,272.

The petitioner argues that DAIL's motion to dismiss is not ripe because the petitioner has not yet received ADSS. The initial appeal dealt with eligibility criteria not the scope or provision of ADSS to an eligible individual. Eligibility is no longer an issue.

Potential issues involving the scope of ADSS and the start date for ADSS are not ripe for review. Petitioner's Motion for Funding Determination is premature. Northwestern Counseling found petitioner eligible for ADSS on or about September 2, 2008.¹ The parties need to work with Northwestern Counseling and DOC to finalize the scope of funding and ADSS for petitioner.² If the petitioner is dissatisfied with Northwestern Counseling's actions, petitioner can bring a new appeal.

¹ Northwestern Counseling has, at a minimum, forty-five days from September 2, 2008 or October 17, 2008 to notify petitioner of assessment results and funding.

² This case has been complicated by delays from DOC. Both parties have been diligent seeking a discharge plan from DOC. To the extent that delays are attributable to DOC, the petitioner does not have recourse from the Board although the petitioner may have other legal recourse against DOC.

ORDER

DAIL's Motion to Dismiss petitioner's appeal as moot is granted. Petitioner's Motion for Notice of Funding Determination is denied as premature.

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